

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JEFFREY ANCHOR, ET AL.,

Plaintiffs,

v.

ORDER
04-CV-300S

DIAZ INTERMEDIATES CORPORATION, ET AL.,

Defendants.

1. On April 15, 2004, Plaintiffs commenced this environmental action against Defendants by filing a Complaint in United States District Court for the Western District of New York.

2. On March 19, 2008, Defendants filed a Motion to Dismiss Certain Plaintiffs due to their failure to prosecute their claims. (Docket No. 88.) On September 15, 2008, this Court referred this case to the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge, for all pretrial matters and to hear and report on dispositive motions pursuant to 28 U.S.C. § 636(b)(1). (Docket No. 94.)

3. On October 10, 2008, Judge Schroeder filed a Report and Recommendation recommending that Defendants' motion be granted in part and denied in part. (Docket No. 96.) Judge Schroeder also identified a subset of plaintiffs for which he recommended dismissal unless their counsel declared by November 10, 2008, that the subset of plaintiffs had complied with their discovery obligations. (Docket No. 96, pp.6-7.) No such declaration was filed.

4. No objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

IT HEREBY IS ORDERED, that this Court accepts Judge Schroeder's Report and Recommendation (Docket No. 96) in its entirety.

FURTHER, that Defendants' Motion to Dismiss Certain Plaintiffs (Docket No. 88) is GRANTED in part and DENIED in part, consistent with Judge Schroeder's Report and Recommendation.

FURTHER, that Defendants' Motion to Dismiss Certain Plaintiffs (Docket No. 88) is GRANTED as to Janet B. Bennage; Chad E. Blosehauer; Gary Blosehauer; Sandra Blosehauer; Steven Blosehauer; William D. Brice, Jr. and Carrie Brice, *individually and as parents and natural guardians of Skye Brice, Starr Brice, Sunni Brice, Zachary Brice, and Summer Brice*; Necole Buzard, *individually and as parent and natural guardian of Abbagail Buzard*; Carol Knapp*; Emily Knapp*; Gregory Knapp*; Gary Knapp*; Sara Knapp*; Dorothy A. Lutz, *individually and as parent and natural guardian of Cody Lutz*; Wendi Madden; Joseph Mohney and Susan Mohney, *individually and as parents and natural guardians of Cassandra Mohney and Christina Mohney*; Dylan Pollock*; Justin Pollock*; Lauren Blake; Robert Blake; Terry Probst; Amanda Roberts; William E. Roberts; and Jennifer L. Welch — all of whom the Clerk of the Court is DIRECTED to terminate as plaintiffs in this action.

FURTHER, that the Defendants' Motion to Dismiss Certain Plaintiffs (Docket No. 88) is DENIED as to Brian E. Horst; Georgie Horst; Vernon M. Horst; George Iannone; Mary

* Indicates individuals who are not listed as plaintiffs on the court's docket.

Ellen Miles, *individually and as parent and natural guardian of Rebecca Miles and Jennifer Miles*; Kenneth Swanger and Roxanne Swanger, *individually and as parents and natural guardians of Dana Swanger and Jamie Swanger*; and Rebekah Wheeler-Smith.

SO ORDERED.

Dated: December 4, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

* Indicates individuals who are not listed as plaintiffs on the court's docket.